Single Bench

(4) (1)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

WRIT PETITION NO. 6512 **OF 2006**

PETITIONER Arun Kumar S/o Ramnarayan Devangan aged about 39 years, Mahamaya Para Purani Basti Raipur, C.G., through the Superintendent Engineer –circle Lower Division Clerk, Public Works Department, Raipur, Tahsil and District **RAIPUR** C.G.

P.R. No. 6599/06
Presented by Shri R.K. Majumdar
dated 22-11-06

VERSUS

RESPONDENT Gopika W/o Arun Kumar Devangan, aged about 28 years, R/o Near Bus Stand Dongargaon, Tahsil and Police Station Dongargaon, District Rajnandgaon C.G.

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA ~~FOR ISSUE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS/CERTIORARI ETC. OR DIRECTION/ORDER IN THE LIKE NATURE ETC.~~

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P...6512.... **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

8.12.2006

Smt. Rashmi Thakur, counsel for the petitioner.

Heard on admission.

By way of this writ petition filed under Article 227 of the Constitution of India, the petitioner has challenged the legality, validity and propriety of that part of the order dated 11.10.2006, passed by the IInd Additional District Judge, Rajnandgaon, by which, the learned A.D.J. has dismissed his application filed under Section 10 of the Code of Civil Procedure for stay of the proceedings of civil suit No. 36-A/2006 filed by the respondent for a decree of restitution of conjugal rights.

A perusal of the impugned order would show that petitioner had earlier filed a suit for divorce under Section 13 of the Hindu Marriage Act and the aforesaid suit was dismissed by the trial Court and an appeal against the said judgment of dismissal is pending before the High Court. The petitioner had taken the ground that since an appeal is pending before the High Court against the said judgment and decree, this suit for restitution of conjugal rights cannot be prosecuted. It also appears from the impugned order that earlier to this, a similar application was filed by the petitioner before the said Court, which was dismissed vide order dated 9.11.2005. The trial Court has taken this view that in the facts and circumstances of the case, this subsequent suit cannot be stayed.

P.T.O.

XI-HC-78

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 6512 **सन् 2006**

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	Needless to say that pendency of an appeal against the dismissal of a suit under Section 13 of the Hindu Marriage Act will have no impact on a separate suit filed by the wife under Section 9 of the said Act as both are the proceedings based on separate footings. Moreover, when on earlier occasion, a similar application was dismissed by the said Court vide order dated 9.11.2005, the aforesaid order would operate as *res judicata* in the subsequent stage of the same suit and in view of the provisions of Section 11 C.P.C., an application of similar nature would not be maintainable. There appears to be no illegality in the order passed by the trial Court while rejecting an application filed under Section 10 C.P.C. on the same grounds. The petition has no merit. The same is dismissed in limine. **Sd/-** **Sunil Kumar Sinha** **Judge**	

P.T.O.